

# Supreme Court of the United States

OCTOBER TERM, 1970

No. 759

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UNITED STATES OF AMERICA,

*Appellant,*

—v.—

ARMOUR & COMPANY AND GREYHOUND CORPORATION

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

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## INDEX

	Page
Suggestion of mootness and motion to dismiss appeal filed by General Host on May 18, 1970 .....	1
Memorandum in opposition to motion to dismiss for moot- ness and application of the United States for injunctive relief pendente lite .....	4
Greyhound's answer to appellant's application filed May 25, 1970, together with .....	13
Exhibit A .....	23
Exhibit B (Excerpts from Prospectus) .....	41
Exhibit C .....	60
Further memorandum for the United States filed May 25, 1970 .....	61

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

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No. 103

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UNITED STATES OF AMERICA, APPELLANT

v.

ARMOUR & COMPANY AND GENERAL HOST CORPORATION

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On Appeal from the United States District Court  
for the Northern District of Illinois

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APPELLEE GENERAL HOST CORPORATION'S SUGGESTION OF  
MOOTNESS AND MOTION TO DISMISS APPEAL

General Host Corporation moves the Court to dismiss as moot the appeal of the United States from the judgment of the district court dismissing the Government's petition to make General Host Corporation ("General Host") a party to the case of *United States v. Swift & Company et al.*, Civil Action No. 58 C 613 (N.D. Ill.) and for an injunction against further acquisition by General Host of stock in Armour & Company ("Armour").

On Thursday, May 14, 1970, the Interstate Commerce Commission granted the Application of the Greyhound Corporation ("Greyhound") for Authority under Sections 5(3), 21a, and 214 of the Interstate Commerce Act to Issue Securities (Finance Docket No. 26056), thus permitting Greyhound to consummate an agreement dated October 27, 1969 with General Host to purchase all of General Host's stock interest in Armour. Later

that day the transaction was completed. Pursuant to the agreement General Host transferred all of its interest in Armour to Greyhound, and resignations from the Board of Directors of Armour of all directors of Armour nominated by General Host have been submitted.

The Government was advised in October, 1969 of the proposed sale to Greyhound of General Host's stock in Armour, and on November 6, 1969 was provided with a copy of the contract. Shortly thereafter, on November 17, 1969, the Government requested (and received) an extension of time for filing its brief on the merits in this case in order "to consider whether, in light of the agreement [between General Host and Greyhound], there is occasion for the Court to decide the case . . . ." (Letter to Honorable John F. Davis from the Solicitor General).

Since the proposed sale could not be consummated until the Interstate Commerce Commission authorized Greyhound to issue securities, the parties concluded that the General Host-Greyhound agreement did not itself moot the case, and this Court was so advised in oral argument on March 5, 1970.

Subsequently, however, the Government did determine that consummation of the transaction following favorable action by the Interstate Commerce Commission would moot the case, and it so advised the Commission in a document captioned "Additional Memorandum of the Department of Justice", which it filed on March 23, 1970, in Finance Dkt. No. 26056 *supra*. The Government there asked that the Commission withhold its decision on Greyhound's request until after this Court's ruling in the instant case, stating:

Through its General Counsel Greyhound has advised us [by letter dated February 27, 1970] that it intends to consummate the transaction with General Host for Armour securities promptly upon receiving Commission approval. The result would be that the case in the Supreme Court would be mooted . . . . (pp. 4-5).

General Host agrees that consummation of the General Host-Greyhound transaction moots this case. The

only substantive relief sought by the Government was an injunction restraining General Host from "acquiring . . . additional shares of stock in Armour and from taking any action to exercise control over or to influence the business affairs of Armour, as long as General Host is engaged in businesses dealing in products listed in the Decree of February 27, 1920." Complete divestiture has now occurred; General Host holds no interest whatsoever in Armour. Since the acquisition of stock by General Host of a defendant meat-packer was a unique event, and there is no likelihood that it will recur, it is suggested that the issues presented to this Court on this appeal are moot and the appeal should be dismissed.

Respectfully submitted,

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[Caption Omitted in Printing]

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FOR  
MOOTNESS AND APPLICATION OF THE UNITED STATES  
FOR INJUNCTIVE RELIEF PENDENTE LITE

The appellee General Host Corporation has filed a motion urging the Court to dismiss this case as moot because—in an extraordinary sequence of events that we shall describe—General Host has now transferred its stock in Armour & Company to Greyhound Corporation. For reasons that we elaborate, we believe that these events have not made the case moot and that the motion to dismiss should be denied.<sup>1</sup> In addition, we suggest that Greyhound's role with respect to the matters involved in this case is such that it should be made a party on remand and this Court should provide interim relief prohibiting Greyhound from increasing or utilizing its control over Armour until the legality of such control is determined.

INTRODUCTION

The basic issue in this appeal, which was argued on March 5, 1970, is whether the 1920 antitrust decree

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<sup>1</sup> General Host suggests that the government is bound by the statement, in a document filed by Antitrust Division attorneys with the Interstate Commerce Commission, that consummation of the transfer of stock would moot the case. That statement was made without the knowledge or approval of the Solicitor General and was ill-advised and incorrect. Moreover, it was not essential to the Department's position before the Commission, which was primarily based upon the proposition—reflected also in *California v. Federal Power Commission*, 369 U.S. 482—that an administrative agency should not approve a transaction pending the conclusion of litigation that will determine its legality under the antitrust laws. In any event, questions of mootness, which go to jurisdiction, cannot be determined by stipulation or concessions by the parties.

Equally irrelevant is the fact, cited by General Host, that the government sought postponement of the briefing schedule in this Court for a time in order to consider the effect of the General Host-Greyhound agreement. The practical considerations that might have been relevant if General Host had been ready to transfer its stock before the case was presented to the Court have nothing to do with the question whether a transfer makes the case moot as a matter of law.

against Armour and other meat packers allows Armour to be taken over by a company engaged in food businesses that Armour is prohibited from entering directly or indirectly. Specifically, the United States appealed from an order of the district court denying its petition to make General Host a party to the decree and to prohibit General Host from owning a controlling interest in Armour while engaging in the forbidden food businesses. The United States sought a judgment remanding the case to the district court with instructions to make General Host a party and to order an appropriate remedy; unless General Host were to give up its forbidden food interests, the remedy would presumably be divestiture of the Armour stock, under the district court's supervision, to someone not in a forbidden food business.

Before the case was briefed in this Court, General Host entered into an agreement with Greyhound, which already owned a substantial minority interest in Armour, under which General Host would sell its Armour stock to Greyhound subject to a number of contingencies. The brief for the United States mentioned this agreement and also pointed out that Greyhound, like General Host, is engaged in food businesses prohibited to Armour under the decree. (Brief p. 10 and note 7) The matter was also discussed at the oral argument, at which time appellee's counsel advised the Court that in General Host's view the only remaining contingency to the consummation of the agreement was the obtaining by Greyhound (a regulated motor carrier) of Interstate Commerce Commission authority to issue stock in partial payment of the purchase price; counsel declined, however, to predict when such authority could be obtained. Counsel for the United States expressed the government's view that Greyhound's control of Armour would be just as inconsistent with the decree as General Host's control. (See transcript of oral argument, pp. 17-19.) Indeed, on November 24, 1969, the Department had formally advised Greyhound and General Host of this view and issued a press release to the same effect.<sup>2</sup>

<sup>2</sup> It is undisputed that, through subsidiaries, Greyhound deals in many of the food products forbidden to Armour. It is engaged